Supreme Court, U.S.
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NO. _____

UNITED STATES SUPREME COURT

OCTOBER, 1994, TERM

VERMILION PARISH BUS DRIVERS AND
OPERATORS ASSOCIATION and
JEFFREY J. FAULK, SR.,
Petitioners

VERSUS

VERMILION PARISH SCHOOL BOARD, ET AL,
Respondents

ON PETITION FOR WRITS OF CERTIORARI AND
MANDAMUS TO THE UNITED STATES COURT
OF APPEALS, FOR THE FIFTH CIRCUIT

APPENDIX TO
PETITION FOR WRITS OF
CERTIORARI AND MANDAMUS
VOLUME I OF II

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UNITED STATES COURT OF APPEALS

For the Fifth Circuit

No. 93-5434

Summary Calendar

VERMILION PARISH BUS DRIVERS AND OPERATORS ASSOCIATION AND JEFFREY J. FAULK, SR.,

Plaintiffs/Appellants,

VERSUS

VERMILION PARISH SCHOOL BOARD, DANIEL R. DARTEZ, ANTHONY J. FONTANA, JR., KIBBIE P. PILLETTE, HAMPTON J. PRIMEAUX, CECIL

J. HEBERT, CARROLL E. LeBLANC, HERMAN J. SUIRE, and DUFFY G. MARCEAUX, JR.,

Defendants/Appellees.

Appeal from the United States District Court For the Western District of Louisiana

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(92 CV 922)

Before REYNALDO G. GARZA, DUHE', and EMILIO GARZA, Circuit Judges.

PER CURIAM*:

This is a 42 U.S.C. § 1983 claim rising out of plaintiff Faulk's employment as a bus driver by the Vermilion Parish School Board. Plaintiffs-appellants, the Vermilion Parish Bus Drivers & Operators Association and its President, Jeffrey J. Faulk, Sr. ("plaintiffs"), brought this action against the appellees, Vermilion Parish School Board, its superintendent, Daniel R. Dartez and its respective individual members, (Anthony J. Fontana, Jr., Kibbie P. Pillette, Hampton J. Primeaux, Cecil

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*Local Rule 47.5 provides: "The publication of opinions that have no precedential value and merely decide particular cases on the basis of well-settled principles of law imposes needless expense on the public and burdens on the legal profession." Pursuant to that Rule, the Court has determined that this opinion should not be published.

J. Herbert, Carroll E. LeBlanc, Herman J. Suire, Duffy G. Marceaux, Jr.). Also joined in this suit is the Vermilion Parish Assistant District Attorney and General Counsel for the School Board, Calvin Woodruff. Plaintiffs claim that Dartez, the School Board Members and Woodruff have violated their Constitutional rights by virtue of certain actions allegedly taken by the School Board concerning the employment and discipline of Faulk and the compensation of certain "substitute" bus drivers. Appellants appeal the summary judgment granted in favor of the defendants-appellees dismissing all of their claims. WE AFFIRM.

I.

In this 1983 action, plaintiffs contend that the defendants violated their Constitutional rights by virtue of

certain actions taken by the School Board concerning the employment and compensation of school bus drivers. Of concern to us on appeal are appellant Faulk's claims that he was denied due process prior to his two suspensions without pay, and that he was retaliated against for exercising his right to free speech. As detailed below, plaintiff Faulk was involved in two incidents, one involving a bus accident and the other concerned the alleged slapping of a student that resulted in the School Board disciplining Faulk with suspensions.

Faulk claims that prior to this time he had not experienced any problems with the School Board or any of its members, and his problems began when he threatened to speak out regarding the School Board's alleged violation of the law, concerning

employment of "substitute" bus drivers beyond a 90-day period.[1]

Faulk argues that the basic violations of his procedural Due Process rights occurred subsequent to the two occurrences detailed below. These

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[1] State law empowers the Board to appoint "substitute" drivers with a mandatory condition provided by LSA-R.S. 17:500(C)(c):

> At any time a substitute bus driver has been driving a route for more than 90 consecutive days, the school board shall review the circumstances of the regular operator to be certain that the continued use of a substitute operator is warranted and appropriate.

Appellants allege that the School Board have knowingly violated that state law by unlawfully continuing "substitute" drivers long after 90 days to the detriment of the Associations' membership. Moreover, it was the threat of disclosing this allegation that forms the basis of Faulk's claim that he was retaliated for exercising his free speech.

The substitute drivers are not party to this action.

principal actions resulted in two suspensions of Faulk by the Board members, which he claims were instituted without complying with the requirements of Louisiana's tenure laws, La. Rev. Stat. 17:492-93.

Incident Number 1 involved an accident between Faulk's bus and a farm truck on May 1, 1991. The Plaintiff was involved in an accident while operating his bus. According to the School Board, Faulk violated board policy and state law by failing to promptly report that accident to either the police or the School Board. Instead, Faulk left the scene of the accident and completed his route. After a hearing before the Board on July 30, 1991, Faulk was found guilty of willful neglect of duty and suspended without pay for five (5) days.

Incident Number 3 involved a complaint by a parent that Faulk had slapped a student on his school bus. Faulk was suspended by the School Board for ten (10) days effective April 27, 1992.

Plaintiff has alleged other instances where the board, Dartez, and Woodruff have sought to punish him for threatening to speak out about the substitute bus driver policy. Faulk does not claim that these incidents standing alone rise to a Constitutional violation of his civil rights, however, he claims that they represent a pattern of the School Board Members' retaliation for his speech.

Incident Number 2 involved a modification of plaintiff's bus route. Faulk alleges that the School board violated state school policy when they

required Faulk to alter his route by dropping off children on the way out of a dead end street, instead of on the way into the dead end street.

Incident Number 4 involves the School Board policy concerning the interplay between extra compensation earned by drivers for extracurricular activities and drivers' "personal leave" as granted in the bus drivers' contract, Article 10.2(a). Plaintiff claims bus drivers should not take "sick days," if in fact they are not sick, as the practice harms the drivers and the bus drivers' association.

Further, plaintiff alleges that Dartez, the School Board Members, and Woodruff decided to retaliate against him for his statements to the public that the practice of the School Board of keeping certain drivers in the position of

"substitute" was against the law. Plaintiff also alleges that his right to freedom of speech, as protected by the First Amendment, was abri[illegible]ed by Dartez, the School Board Members and Woodruff pursuant to the board's adverse actions toward him.

II.

Dismissal of Due Process Complaint

Faulk argues that he has a Constitutionally protected property interest in his right to unfettered continuance of his employment and receipt of his salary. He states that his Constitutionally protected property interest arises from La. Rev. Stat. 17:492, which grants tenure to certain bus drivers. Faulk has driven a school bus in Vermilion Parish since 1967 and therefore, has been tenured for approximately 23 years. La. Rev. Stat. 17:492 states in pertinent part:

Each school bus operator shall serve a probationary term of three (3) years reckoned from the dated of his first employment in the parish in which the operator is serving his probation. During the probationary term the parish school board may dismiss or discharge any operator upon the written recommendation of the parish superintendent of schools accompanied by valid reasons therefor.

Any school bus driver found unsatisfactory by the parish school board at the expiration of the probationary term shall be notified in writing by the school board that he has been discharged or dismissed; in the absence of such notification such probationary school bus operator shall automatically become a regular and permanent operator in the employ of the school board of the parish in which he has successfully served his probationary term.

. . .

In order to acquire tenure under the provisions hereof, each school bus operator shall personally operate and drive the school bus he is employed to operate; no one shall acquire tenure in the operation of more than one school bus.

Appellant further states that his Constitutionally protected property interest includes being allowed to perform his duties without interruption or suspension, absent being found guilty by substantial evidence, after a hearing by the board and after receiving proper notice from the superintendent all in accordance with the state law governing removal of tenured bus drivers, La. Rev. Stat. 17:493. La. Rev. Stat. 17:493 states in part:

> a. A permanent school bus operator shall not be removed from his position except upon written and signed charges of willful neglect of duty, or incompetence, or immorality, or drunkenness while on duty, or physical disability to perform his duties, or failure to keep his transfer equipment in a safe, comfortable, and practical operating condition or of being a member or contributing to any group, organization, movement, or

corporation that is prohibited by law or injunction from operating in the State, and then only if found guilty after a hearing by the school board of the parish or city in which the school bus operator is employee. . . .

b. All hearings hereunder shall be private or public, at the option of the operator affected thereby. . . . The operator affected shall have the right to appear before the board with witnesses in his behalf and with counsel of his selection, all of whom shall be heard by the board at said hearing. For the purpose of conducting hearings hereunder, the board shall have the power to issue subpoenas to compel the attendance of all witnesses on behalf of the operator. Nothing herein shall impair the right of appeal to a court of competent jurisdiction.

c. If a permanent school bus driver is found guilty by a school board, after due and legal hearing has provided herein, of charges of willful neglect of duty,. . . and ordered

removed from office, or disciplined by the board, the superintendent with approval of the board shall furnish to the school bus operator a written statement of recommendation of removal or discipline, which shall include but not be limited to the exact reason, offense or instance upon which the recommendation is based. **Such operator may, not more than one (1) year from the date of said finding, petition a court of competent jurisdiction for a full hearing to review the action of the school board, and the court shall have jurisdiction to affirm or reverse the action of the school board in the matter.** If the finding of the school board is reversed by the court and the operator is ordered reinstated and restored to duty, the operator shall be entitled to full pay for any loss of time or salary he may have sustained by reason of the action of said school board. (emphasis added).

Appellant alleges that his Due Process right arising from his interest

in continued employment was violated. Appellant's first complaint is that the district court committed egregious error in incorrectly dismissing his Due Process claims because he was denied a pre-deprivation due process hearing. Appellant's position is that the state statute affords him a more elaborate pre-deprivation hearing that the minimum "notice and opportunity to be heard" standards dictated by the United States Constitution. He looks to this court to enforce the Louisiana statutory pre-deprivation procedures. For the following reasons we affirm the district court on this point.

The Fourteenth Amendment requires only that a party "be given notice and an opportunity to be heard." Franceski v. Plaquemines Parish School Board, 772 F.2d 197, 199 (5th Cir. 1985). The United States Supreme Court has described the

standard in determining what constitutes "due process" for the more serious action of actually firing an employee as follows:

> [The] pre-termination [hearing] though necessary, need not be elaborate. We have pointed out that "[t]he formality and procedural requisites for the hearing can vary, depending upon the importance of the interests involved and the nature of the subsequent proceedings. [citations omitted.] In general, "something less" than a full evidentiary hearing is sufficient prior to adverse administrative action. [citations omitted.]
> . . .
> [The] pre-termination hearing need not definitely resolve the propriety of the discharge. It should be an initial check against mistaken decisions - essentially, a determination of whether there are reasonable grounds to believe that the charges against the employee are true and support the proposed action. [citations omitted.]
>
> The essential requirements of due process . . . are notice and an opportunity to respond.

> The opportunity to present reasons, either in person or in writing, why a proposed action should not be taken is a fundamental due process requirement. [citations omitted.] The tenured public employee is entitled to oral or written notice of the charges against him, an explanation of the employer's evidence, and an opportunity to present his side of the store. [citations omitted.] to require more than this prior to termination would intrude to an unwanted extent on the government's interest in quickly removing an unsatisfactory employee.

Cleveland Board of Education v. Loudermill, 470 U.S. 532, 545-46 (1985). This circuit has specifically held that due process requires only that the public employee be provided notice and an opportunity to be heard prior to his discharge. Wilson v. UT Healthcare, 973 F.2d 1263, 1270 (5th Cir. 1992), cert. denied, 113 S. Ct. 1644 (1993). In Browning v. City of Odessa, Texas, 990 F.2d 842, 844 (5th Cir. 1993), this court

found that a short meeting lasting less than thirty minutes wherein the employee simply explained his side of the story was sufficient for due process purposes. "The due process clause of the Fourteenth Amendment is not a guarantee against incorrect or ill-advised personnel decisions." Bishop v. Wood, 426 U.S. 341, 350 (1976).

In the instant case, Faulk was afforded more than adequate Constitutional Due Process prior to his five day suspension. By letter dated May 27, 1991, Faulk was advised that the School Board intended to conduct an investigation into his failure to promptly report his bus accident. Faulk was also fully advised of the charges and provided with the date and time of a hearing to be conducted on the charges against him. Faulk was represented by

counsel through this process, and this counsel met with the school superintendent to more fully discuss the charges to be addressed in the upcoming hearing. That evidentiary hearing was ultimately held on July 30, 1991.

Faulk was not suspended until after a full evidentiary hearing had been held. He was represented by counsel and had ample notice of the hearing and full opportunity to cross-examine his accusers. Faulk was allowed to and in fact did call witnesses on his own behalf. This evidentiary hearing more than satisfied the Constitutional Due Process requirements.

Faulk was made plainly aware of the complaint against him. He was afforded full opportunity to present his side of the issue. Only after a full evidentiary hearing that went above and beyond

constitutional requirements was he suspended for five days. The protections afforded Faulk were more than adequate for such minor sanctions.

Similarly, Faulk was afforded far more protection than required prior to his ten day suspension in 1992. That suspension arose from a parent's complaint that Faulk had slapped a student on his school bus. The School Board investigated that charge and ultimately decided to suspend Faulk for a period of ten days. On January 27, 1992, Faulk was given written notice of the complaint made against him. Once again, Faulk was represented by legal counsel throughout his process. Faulk's attorney made a written response to the charges on January 29, 1992. Faulk was therefore given notice and an opportunity to respond. Additionally, the School Board

conducted a full investigative hearing into the incident. At that hearing, Faulk was again represented by counsel. He had full opportunity to cross-examine his accusers and to present evidence on his own behalf. The committee ultimately recommended to the School Board that Faulk be suspended for ten days without pay, and the Board followed that recommendation.

Since it is clear that the appellant received both notice and an opportunity to respond to the charges against him before any deprivation or interruption in his right to continued employment occurred, we affirm the district court's judgment on this alleged point of error. It appears that Faulk is complaining about the result reached in those hearings, and for that La. Rev. Stat. 17:493(c) provides an adequate remedy of

review through the state court system. Because we find that the pre-deprivation due process was sufficient, we need not address the value of any post-deprivation remedies in light of the Parratt/Hudson doctrine.[2]

Dismissal of First Amendment Claim: Public Concern or Private Matter?

Appellants next contend that their First Amendment right to free speech was abridged because the defendants conduct

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[2] The Parratt/Hudson Doctrine provides that post-deprivation remedies are all the process that are due in certain instances "simply because they are the only remedies the state could be expected to provide." Zinermon v. Burch, 494 U.S. 113, 128 (1990). The underlying principle is that any proposed pre-deprivation safeguards would be of limited value in preventing the kind of deprivation at issue in the specific case. Id. at 129. Because the value of any pre-deprivation safeguard would be "negligible in preventing the kind of deprivation at issue," post-deprivation remedies are sufficient as a matter of law. Id.

discussed above was in retaliation of Faulk's speaking out against some questionable practices. More specifically, appellants contest the district court's finding that the speech in question did not involve matters of public concern.

The threshold legal question for a determination of a violation of a plaintiff's right to freedom of speech is whether the employee's speech dealt with matters of truly public concern opposed to matters of purely personal interests or inter-office disputes. Connick v. Myers, 461 U.S. 138, 146 (1983). Faulk claims that the public at large would have had an interest in knowing that the Vermilion Parish School Board was allegedly keeping certain bus drivers in the position of "substitutes" in contravention of the law. In Connick,

the Supreme Court rejected this argument and the Fifth Circuit as well has stated:

> Because almost anything that occurs within a public agency could be of concern to the public, we do not focus on the inherent interest or importance of the matters discussed by the employee. Rather, our task is to decide whether the speech at issue in a particular case was made primarily in the plaintiff's role as a citizen or primarily in the role as an employee.

Caine v. Hardy, 943 F.2d 1406, 1416 (5th Cir. 1991) (en banc), cert. denied, 112 S.Ct. 1474 (1992).

Appellant clearly states that his remarks were made in the context of an employee of the Vermilion Parish School Board and as a representative of the Vermilion Parish Bus Drivers Association. As previously stated, the substitute drivers are not members of the Association.

A determination of "public concern" is a question of law to be resolved by the court. Connick, 461 U.S. at 148. This Court finds that Faulk's statements concerning the substitute drivers do not rise to the level of "public concern," as the speech in question was primarily concerned with Faulk's representation of the Vermilion Parish Bus Drivers' Association. Although, it may be inferred that the alleged retaliation by the School Board was directed at Faulk, as the Association's president, the statement about the substitutes was not sufficient to be deemed a matter of public concern. "Such a constitutionalization of primarily intra-office disputes would invite undesirable judicial interference into mundane government operations, however, with hardly even a marginal effect on the

vigorous debate of public issues secured by the First Amendment." Caine, 943 F.2d at 1416.

Therefore, we find that appellants' First Amendment freedom of speech rights were not violated by Dartez, the School Board Members, or Calvin Woodruff, as his statements were not of sufficient public concern to warrant constitutional protection.

Dismissal of Calvin Woodruff

Appellants finally assert that the district court committed error in dismissing Calvin Woodruff as a defendant. Appellants were allowed to amend their complaint to name Calvin Woodruff, attorney for the Vermilion Parish School Board and also an assistant district attorney for Vermilion Parish, as defendant. Plaintiffs' claim was based on a series of allegations, loosely

based on the theory that private parties may be held liable under section 1983 if "they willfully participate in joint action with state agents."

The district judge found that although the appellants made a number of allegations, they provided no documentation, affidavits, or deposition testimony to support the claims that defendant Woodruff willfully conspired with the School Board to violate plaintiffs' rights. We agree.

In opposing a motion for summary judgment, "an adverse party may not rest upon the mere allegations or denials of his pleading, but by his response by affidavits or as otherwise provided in [Fed. R. Civ. P. 45], must set forth specific facts showing there is a genuine issue for trial." Fed. R. Civ. P. 56(e). "On a motion for summary judgment, the

opponent bears the burden of establishing that there are genuine issues of material fact, and may not wait until trial or appeal to develop claims or defenses to the summary judgment motion." C. F. Dahlberg & Co., Inc. v. Chevron, USA, Inc., 836 F.2d 915, 920 (5th Cir. 1988). The appellants have failed to meet the burden of coming forward with "opposing affidavits or other competent evidence setting forth specific facts to show that there is a genuine issue of material fact for trial. Mere allegations are insufficient." United States v. An Article of Drug Consisting of 4,680 Pales, 725 F.2d 976, 985 (5th Cir. 1984).

Moreover, since we find no deprivation of any constitutional right to have occurred, Woodruff could not be guilty of willfully conspiring to violate plaintiffs' rights.

For the foregoing reasons, the judgment of the district court is AFFIRMED.

FILED ON: APRIL 28, 1994

UNITED STATES DISTRICT COURT

WESTERN DISTRICT OF LOUISIANA

LAFAYETTE-OPELOUSAS DIVISION

VERMILION PARISH BUS DRIVERS, ET AL	CIVIL ACTION
	NO: 92-0922
VERSUS	
	JUDGE DOHERTY
VERMILION PARISH SCHOOL BOARD, ET AL	MAGISTRATE TYNES

MEMORANDUM RULING

This matter comes before the Court by way of a February 2, 1993 motion by defendants in this matter to dismiss or in the alternative for summary judgment. On March 2, 1993 plaintiff filed a memorandum in opposition to defendants' motion; however, on March 3, 1993 this Court granted plaintiffs leave to supplement their original memorandum after the completion of discovery in this matter. Subsequent to the completion of discovery plaintiff filed a supplemental

memorandum to their original memorandum in opposition to defendants' motion and also submitted a motion by plaintiffs for summary judgment on the issue of liability. This Court subsequently requested the parties to submit a brief informing the Court of the status of suit filed in the 15th Judicial District Court, Parish of Vermilion, State of Louisiana, Docket No. 92-61485-B, entitled "Vermilion Parish Bus Drivers & Operators Association and Jeffrey J. Faulk, Sr. vs. Vermilion Parish School Board, et al." The Court was particularly interested in the substance of the action and reason for hearing before the Honorable Douglas J. Nehrbass on June 22, 1992.

This action is brought pursuant to 42 U.S.C. § 1983 and arises out of plaintiff's employment as a bus driver by

the Vermilion Parish School Board. The plaintiffs are the Vermilion Parish Bus Drivers & Operators Association and its President, Jeffrey J. Faulk, Sr. ("plaintiffs"), defendants are the Vermilion Parish School Board ("School Board"), its superintendent, Daniel R. Dartez ("Dartez") and its respective individual members, (Anthony J. Fontana, Jr., Kibbie P. Pillette, Hampton J. Primeaux, Cecil J. Hebert, Carroll E. LeBlanc, Herman J. Suire, Duffy G. Marceaux, Jr.) ("School Board Members"). Also made a defendant is the Vermilion Parish Assistant District Attorney and General Counsel for the School Board, Calvin Woodruff ("Woodruff"). Plaintiffs claim that Dartez, the School Board Members and Woodruff have violated their constitutional rights by virtue of certain actions allegedly taken by the

School Board concerning the employment and discipline of Mr. Faulk and the compensation of certain "substitute" bus drivers.

Applicable Law

The Civil Rights Act of 1871, 42 U.S.C. § 1983, is a procedural vehicle to recover for deprivations of rights established elsewhere in the law. San Jacinto Savings & Loan v. Kacal, 928 F.2d 697 (5th Cir. 1991). The statute states in pertinent part:

> "Every person who, under color of any statute, ordinance, regulation, custom, or usage, or any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in

> equity, or other proper proceeding for redress."

42 U.S.C. § 1983 (West 1981).

Therefore, in order to recover under § 1983, plaintiffs must prove that (1) the conduct occurred under the color of state law and (2) the conduct deprived the plaintiffs of a right, privilege or immunity secured by the Constitution or a law of the United States. Hernandez v. Maxwell, 905 F.2d 94 (5th Cir. 1990). The Supreme Court in numerous rulings has indicated that § 1983 is a means to redress Constitutional concerns and is not a remedy to what may be properly characterized as general tort law claims:

> "The Constitution deals with the large concerns of the governors and the governed, but it does not purport to supplemental traditional tort law in laying down rules of conduct to regulate liability for injuries that attend living together in society. We have previously rejected reasoning that 'would

> make of the Fourteenth Amendment a font of tort law to be superimposed upon whatever systems may already be administered by the states.'"

Daniels v. Williams, 474 U.S. 327, 332, 106 S.Ct. 662, 665, 88 L.Ed. 2d 662 (1986), quoting Paul v. Davis, 424 U.S. 693, 96 S.Ct. 1155, (1976).

Plaintiff, Jeffrey J. Faulk, Sr., argues that he has a constitutionally-protected property interest in his right to unfettered continuance of his employment and receipt of his salary. Plaintiff states that his constitutionally-protected property interest arises from La. Rev. Stat. 17:492, which grants tenure to certain bus drivers. Mr. Faulk has driven a school bus in Vermilion Parish since 1967 and therefore, has been tenured for approximately 23 years. La. Rev. Stat. 17:492 states in pertinent part:

"Each school bus operator shall serve a probationary term of three (3) years reckoned from the date of his first employment in the parish in which the operator is serving his probation. During the probationary term the parish school board may dismiss or discharge any operator upon the written recommendation of the parish superintendent of schools accompanied by valid reasons therefore.

Any school bus driver found unsatisfactory by the parish school board at the expiration of the probationary term shall be notified in writing by the school board that he has been discharged or dismissed; in the absence of such notification such probationary school bus operator shall automatically become a regular and permanent operator in the employ of the school board of the parish in which he has successfully served his probationary term.
...

In order to acquire tenure under the provisions hereof, each school bus operator shall personally operate and drive the school bus he is employed to operate; no one shall acquire tenure in the operation of more than one school bus."

Plaintiff further states that this constitutionally-protected property interest includes being allowed to perform his duties without interruption or suspension, absent being found guilty by substantial evidence, after a hearing by the board and after receiving proper notice from the superintendent all in accordance with the state law governing removal of tenured bus drivers, La. Rev. Stat. 17:493. La. Rev. Stat. 17:493 states in pertinent part:

> a. A permanent school bus operator shall not be removed from his position except upon written and signed charged of willful neglect of duty, or incompetence, or immorality, or drunkenness while on duty, or physical disability to perform his duties, or failure to keep his transfer equipment in a safe, comfortable, and practical operating condition or of being a member or contributing to any group, organization, movement, or corporation that is prohibited by law or injunction from

operating in the State, and then only if found guilty after a hearing by the school board of the parish or city in which the school bus operator is employed....

b. All hearings hereunder shall be private or public, at the option of the operator affected thereby.... The operator affected shall have the right to appear before the board with witnesses in his behalf and with counsel of his selection, all of whom shall be heard by the board at said hearing. For the purpose of conducting hearings hereunder, the board shall have the power to issue subpoenas to compel the attendance of all witnesses on behalf of the operator. Nothing herein shall impair the right of appeal to a court of competent jurisdiction.

c. If a permanent school bus driver is found guilty by a school board, after due and legal hearing has provided herein, of charges of willful neglect of duty, or of incompetence, immorality, or drunkenness while on duty, or physical disability to perform his duties, or failure to keep his transfer equipment in a safe, comfortable, and practical operating condition, or being a member of or contributing to

> any group, organization, movement or corporation that is prohibited by law or injunction from operating in the state, and ordered removed from office, or disciplined by the board, the superintendent with approval of the board shall furnish to the school bus operator a written statement of recommendation of removal or discipline, which shall include but not be limited to the exact reason, offense or instance upon which the recommendation is based. Such operator may, not more than one (1) year from the date of said finding, petition of court of competent jurisdiction for a full hearing to review the action of the school board, and the court shall have jurisdiction to affirm or reverse the action of the school board in the matter. If the finding of the school board is reversed by the court and the operator is ordered reinstated and restored to duty, the operator shall be entitled to full pay for any loss of time or salary he may have sustained by reasons of the action of said school board.

Plaintiff alleges that he has both a procedural and a substantive Due Process right arising from his interest in his

continued employment, which includes being able to perform his duties without an interruption or suspensions unless proper procedures pursuant to the Louisiana Tenure Statute are followed. Further, plaintiff alleges that Dartez, the School Board Members and Woodruff decided to "get him" in retaliation for Mr. Faulk's threatened statements to the public that the practice of the School Board of keeping certain drivers in the position of "substitute" was against the law. Plaintiff alleges that his right to freedom of speech, as protected by the First Amendment, and as set forth in Pickering v. Board of Education, 391 U.S. 593, 88 S.Ct. 1731, 201 L.Ed.2d 811 (1968), was abridged by Dartez, the School Board Members and Woodruff pursuant to the board's adverse actions toward him.

As detailed below, plaintiff, Jeffrey Faulk, was involved in two incidents, one involving a bus accident and the other the discipline of a student. The School Board, after what they allege were proper proceedings, disciplined Mr. Faulk. Subsequently, Mr. Faulk failed to obey the board's second suspension order, and the board initially began the process of preparing to conduct an insubordination hearing, which ultimately did not come to fruition.

Plaintiff claims that prior to this time he had not experienced any problems with the School Board or any of its members, and his problems began when he threatened to speak out regarding the School Board's alleged violation of the law, concerning employment of "substitute" bus drivers beyond a 90 day period. "Since that time his problems

with the board have multiplied." (Plaintiff's Memorandum in Opposition, page 7).

Mr. Faulk alleges in his argument that the basic violations of his procedural Due Process rights occurred subsequent to what will be described as Incidents 1 and 3, below. Subsequently two (2) disciplinary actions were allegedly instituted by defendants against plaintiff, Jeffrey Faulk, which Mr. Faulk claims were inconsistent with the requirements of Louisiana's tenure laws, La. Rev. Stat. 17:492 and 493. These principal actions resulted in two (2) suspensions of Mr. Faulk by the School Board Members.

The complaint enumerates eight (8) separate incidents which plaintiffs contend have violated or contributed to a violation of their constitutional rights.

Plaintiffs' response and motion for summary judgment lists six (6) separate areas of claims which will be addressed by this Court.

Incidents

Incident Number 1, as described in paragraphs 15 through 26 of the complaint, involved an accident between Mr. Faulk's bus and a farm truck on May 1, 1991. Subsequent to a hearing before the Board on July 30, 1991, Mr. Faulk was found guilty of willful neglect of duty and suspended without pay for five (5) days. (Defendants' Exhibits J, K, L).

Incident Number 3, as described in paragraphs 33 through 45 of plaintiff's complaint, involved a complaint by a parent that Mr. Faulk had slapped a student on his school bus. Subsequent to

Incident Number 3, Mr. Faulk was suspended by the Vermilion Parish School Board, effective April 27, 1992. On the first day of the suspension, Mr. Faulk drove his bus route. This activity ceased when a letter was delivered to him forbidding entry on school property during the term of the suspension. As a result of Mr. Faulk's behavior on the first day of his suspension, insubordination charges were brought against Mr. Faulk. No hearing has been held on these charges. (Defendants' Exhibit U, Affidavit of Superintendent Daniel Dartez).

Plaintiff has also alleged other instances, Incidents 2, 4 and 7, wherein Dartez, the School Board Members and Woodruff have sought to "punish" him, allegedly for threatening to speak out about the "substitute" bus driver policy, allegedly employed by the School Board.

Plaintiff Faulk does not claim that these incidents, i.e., Incident Numbers 2, 4, and 7, standing alone, rise to a constitutional violation of his civil rights, however, plaintiff claims that they are representative of a "patter" of the School Board Members in retaliation for his actions.

Incident Number 2, as described in paragraphs 27 through 32 of plaintiff's complaint, involve a modification of plaintiff's bus route. Mr. Faulk alleges that the School Board violated state school policy, namely Bulletins 1191 and 1475 (revised), when they required Mr. Faulk to drop off children on the way out of a dead end street, instead of on the way into the dead end street.

Incident Number 4, involves the School Board policy concerning the interplay between extra compensation

earned by drivers for extracurricular activities and drivers' "personal leave" as granted in the bus drivers' contract, Article 10.2(a). Plaintiff claims bus drivers should not take "sick days," if in fact they are not sick, as this practice harms the drivers and the bus drivers' association.

Incident Number 7, as described in paragraphs 52 through 54 of plaintiff's complaint, involves the Vermilion Parish School Board's request for reimbursement for professional leave days in violation of the School Board's policy. (Defendants' Exhibit Y). Plaintiffs claim that this is another example of the School Board's harassment of Mr. Faulk for his statements concerning the "substitute" bus driver policy.

The remaining three claims, Incidents 5, 6 and 8, will also be

separately addressed below, however, they will be dismissed by the Court as each fails to meet the requirements for a claim pursuant to 42 U.S.C. § 1983.

Incident Number 5, as described in paragraphs 41 through 51, involved the allegations in plaintiff's complaint that the Vermilion Parish School Board failed to negotiate a new contract in good faith with the Vermilion Parish Bus Drivers' Association. Plaintiff states no factual basis for the School Board's alleged failure to negotiate in good faith with the Vermilion Parish Bus Drivers. Furthermore, plaintiff has stated no basis, in law, which the alleged failure of the School Board to negotiate a contract would constitute a violation of a constitutional right granted to plaintiff. Therefore, plaintiff's claim based on Incident Number 5 is hereby DISMISSED.

Incident Number 6, involves plaintiff's claims that the Vermilion Parish School Board is allegedly violating La. Rev. Stat. 17:500, by keeping substitute drivers on the payroll longer than a 90 day period. Plaintiff does not claim this issue represents a violation of a federal right, but again, that it represents a pattern of activities, engaged in by the Vermilion Parish School Board, which taken as a whole violates plaintiff's constitutional rights.

As properly stated by the defendant, Jeffrey Faulk is not a "substitute driver" and no "substitute drivers" are members of the Vermilion Parish Bus Drivers Association. Therefore, there is no standing to sue by either Faulk or the Association to bring this claim, if in fact plaintiff is making a claim under this incident.

Further, plaintiffs have presented no evidence or made any allegations that the Vermilion Parish School Board's handling of "substitute" drivers diminishes the Vermilion Parish Bus Drivers Association members' property rights or violates any other alleged constitutional right. Plaintiffs submitted no evidence to the Court on either of these issues. Defendants have made a prima facie case and therefore plaintiffs cannot rest on "bald assertion alone." Fed. R. Civ. Pro. 56(e). Accordingly, plaintiff's claims based on Incident Number 6 are hereby DISMISSED.

Incident Number 8, plaintiffs' complaint in paragraphs 55 through 56, alleges that the Vermilion Parish School Board discriminated against Nathan Levy, because of his race. Plaintiffs do not address the claim alleged on behalf of

Mr. Levy, in their motion in opposition. Based on defendants' assertion, and plaintiffs' failure to meet defendants' argument, this Court DISMISSES plaintiffs' claims based on Incident Number 8.

Before addressing plaintiff's remaining claims, at this juncture the Court will address the claims by plaintiff against Vermilion Parish School Board Attorney Calvin Woodruff.

Plaintiffs were allowed to amend their complaint to name Calvin Woodruff, attorney for the Vermilion Parish School Board and also an assistant district attorney for Vermilion Parish, as defendant. Plaintiffs' claim was based on a series of allegations, loosely based on the theory that private parties may be held liable under § 1983 if "they willfully participate in joint action

with state agents" and the allegations contained in plaintiffs' Memorandum in Opposition to Defendants' Motion for Summary Judgment, pages 23 through 25.

Defendants correctly state that the Court cautioned plaintiffs' counsel at the time plaintiffs were allowed to amend the complaint to name Mr. Woodruff, that it "questioned whether the ends of justice would be served by allowing plaintiffs' amendment." Minute Entry dated August 12, 1992. The Court further cautioned plaintiffs that if discovery revealed no basis for the amendment to name Mr. Woodruff, the Court would entertain a motion for Rule 11 sanctions against plaintiffs' counsel.

Although plaintiffs have made a number of allegations ; the record does not reflect <u>any support</u> for plaintiffs' claims that defendant Woodruff conspired

with the School Board to violate plaintiffs' rights. Plaintiffs have provided no documentation, affidavits, deposition testimony, etc., to support their claims against Mr. Woodruff.

In opposing a motion for summary judgment, "an adverse party may not rest upon the mere allegations or denials of his pleading, but by his response by affidavits or as otherwise provided in [Fed. R. Civ. Pro. 56], must set forth specific facts showing there is a genuine issue for trial." Fed. R. Civ. Pro. 56(e). "On a motion for summary judgment, the opponent bears the burden of establishing that there are genuine issues of material fact, and may not wait until trial or appeal to develop claims or defenses to the summary judgment motion." C. F. Dahlberg & Co., Inc. v. Chevron, USA, Inc., 836 F.2d 915, 920

(5th Cir. 1988). Plaintiffs have failed to meet his burden of coming forward with "opposing affidavits or other competent evidence setting forth specific facts to show that there is a genuine issue of material fact for trial. Mere allegations are insufficient." United States v. An Article of Drug Consisting of 4,680 Pails, 725 F.2d 976, 985 (5th Cir. 1984).

As plaintiffs have failed to produce any affidavits or other competent evidence in support of their claims against defendant Woodruff, plaintiffs' claims against defendant, Calvin Woodruff, are DISMISSED. As this court cautioned plaintiffs' counsel at the time of the amendment, as to the necessity of naming, in this suit counsel for the Vermilion Parish School Board, the Court will entertain a motion by counsel for Mr. Woodruff for attorney's fees for the

prevailing party pursuant to 42 U.S.C. § 1988 and a motion for Rule 11 sanctions against plaintiff's counsel.

Plaintiff, Mr. Faulk, next argues, as previously stated, that he is a tenured school bus driver and as such has a constitutionally protected property interest in his tenured position as a school bus driver for the Vermilion Parish School Board, pursuant to La. Rev. Stat. 17:492, with procedures governing his discipline and removal provided in La. Rev. Stat. 17:493.

Browning v. City of Odessa, Texas, 990 F.2d 842 (5th Cir. 1993), provides the basis for plaintiff's procedural Due Process claim and states as follows:

> The United States Supreme Court decided in Cleveland Bd. of Educ. v. Loudermill, that if a governmental employer provides a full post-termination hearing, pre-termination due process is limited. 470 U.S.

> 532, 546, 105 S.Ct. 1487, 1495, 84 L.Ed.2d 494 (1985). In such circumstances, before dismissing an employee, the employer need only provide the employee with written or oral notice of the charges raised against him, explain to the employee the nature of the evidence of those charges, and afford the employee the opportunity to respond. Id. Helton v. Clements, 832 F.2d 332, 337 (5th Cir. 1987); and Schaper v. City of Huntsville, 813 F.2d 709, 714 (5th Cir. 1987).

A satisfactory pre-termination "hearing" need not be elaborate, for such a hearing is merely designed to prevent the employer from making a mistake. Loudermill, 470 U.S. at 545, 105 S.Ct. at 1495. The purpose of the hearing is simply to ensure that the charges raised against the employee are true and support his or her dismissal. Id. Thus, an informal hearing which allowed the employee to given his version of the facts sufficiently hedges against an

erroneous dismissal and likewise satisfies the requirements of Due Process. Id. at 546, n. 8, 105 S.Ct. at 495, n. 8; Caine v. Hardy, 943 F.2d 1406, (5th Cir. 1991) cert. denied, 111 S.Ct. 1474, (1992).

Mr. Faulk claims that the defendants, the School Board Members, Dartez and Woodruff, failed to sufficiently follow the requisite procedures as provided by La. Rev. Stat. 17:493 and therefore he was denied Due Process prior to the two (2) suspensions, which were imposed by the School Boards. Said suspension were for Incidents Numbers 1 and 3, the bus accident and the alleged slapping of a student on his bus. Mr. Faulk seeks to have this Court review both disciplinary hearings held by the School Board to assess the procedural mechanisms used by the Board in relation

to La. Rev. Stat. 17:493. It appears, however, that Mr. Faulk has failed to take advantage of his statutorily granted post deprivation remedy, an appeal to the state district court. Therefore, this Court's review of the School Board procedures will be precluded for the following reasons.

This Court notes that La. Rev. Stat. 17:493 provides for a pre-deprivation hearing and also provides for a post-deprivation remedy in Section C which states as follows:

> Such operator may, not more than one (1) year from the date of such finding, petition a court of competent jurisdiction for a full hearing to review of the action of the school board, and the court shall have jurisdiction to affirm or reverse the action of the school board in the matter. If the finding of the school board is reversed by the court and the operator is ordered reinstated and restored to duty, the operator shall be

> entitled to full pay for any loss of time or salary he may have sustained by reason of the action of the said school board.

This Court notes that this right includes a bus driver who has been "disciplined by the board." La. Rev. Stat. 17:493.

The Fifth Circuit has repeatedly held, in rejecting procedural Due Process claims, that "an employee cannot ignore the process duly extended to him and later complain that he was not accorded Due Process." Galloway v. The State of Louisiana, 817 F.2d 1154 (5th Cir. 1987). In Pope v. Miss. Real Estate Commission, 872 F.2d 127 (5th Cir. 1989), the Fifth Circuit refused to hearing plaintiff's procedural due process claim and stated: "We rebuffed a challenge to rulings or interpretations of the Commission's regulations, where the plaintiff had

sought no administrative or state court remedy that was statutorily available."

Plaintiffs have presently pending in the 15th Judi[illegible]l District Court, State of Louisiana, an identical case entitled "Vermilion Parish Bus Drivers & Operators Association and Jeffrey J. Faulk, Sr. vs. Vermilion Parish School Board, et al." Plaintiffs state, that the present suit pending before the 15th Judicial District Court is not an appeal of the previous school board rulings, but instead only a suit for injunction to enjoin the School Board from any further disciplinary procedures against Mr. Faulk for the alleged insubordination in connection with his second suspension. Plaintiffs state:

> In essence, the sole question before Judge Nehrbass was whether the school board dotted its "i's" and crossed its "t's" and jumped through all the hoops the legislature has set before it, before it can take

> any further disciplinary action against plaintiff. No consideration of any other matters at issue in the suit currently pending before this Honorable Court were at issue in the injunction action, and it is expected that there will have been no such consideration made when a decision is rendered some time in September, as indicated by Judge Ware who presided at the hearing.

Plaintiff's motion for a preliminary injunction was heard by the Honorable Bradford Ware in the 15th Judicial District Court on July 27, 1993, and was taken under advisement. Plaintiff, as stated, has not made any claim for redress of the disciplinary or other administrative applications which have singled him out for "punishment" for his threatened remarks about "substitute" bus drivers. This Court also notes that plaintiff attempted to have this Court enjoin the School Board from further

disciplinary action against Mr. Faulk, which was denied.

Plaintiff has failed to avail himself of a statutorily granted remedy, hearing in state district court, for a post-deprivation review of the Board's decisions. Therefore, this Court is precluded from a review of plaintiff's claims that defendants failed to follow proper procedures in his pre-deprivation hearings.

Notwithstanding, plaintiff's failure to avail himself of his post-deprivation remedy, this Court will address whether plaintiff could have stated a claim for a violation of procedural Due Process, had he availed himself of his post-deprivation remedy. As plaintiff had a statutorily granted post-deprivation review and remedy, this case falls within the purview of the Parratt/Hudson doctrine,

which provides that a "random unauthorized 'deprivation' would not violate procedural Due Process if the state furnished an adequate post-deprivation remedy." Zinermon v. Burch, 494 U.S. 113, 110 S.Ct. 975, 108 L.Ed.2d 100 (1990), citing Parratt v. Taylor, 451 U.S. 527, 539, 101 S.Ct. 1908, 1915, 68 L.Ed.2d 420 (1981) and Hudson v. Palmer, 468 U.S. 517, 104 S.Ct. 3194, 82 L.Ed.2d 393 (1984).

At this point in the analysis, it is important to clarify that plaintiff Faulk has not challenged the sufficiency of the statutorily-defined procedures which the Board must follow in disciplining its employees. Rather, Faulk claims that the Board misused the procedures by invoking them for improper reasons and applying them in a biased fashion. This challenge is similar to that posed by the

plaintiff in Caine v. Hardy, 943 F.2d 1406, 1411-15 (5th Cir. 1991).[1]

Zinermon, which the Fifth Circuit has noted in Caine, supra, has placed a "wrinkle" on the Parratt/Hudson doctrine, which now requires a case by case analysis by the Court for the application of Parratt/Hudson to plaintiff's claim. Zinermon requires three (3) pre-conditions for the application of the Parratt/Hudson doctrine which are:

1. The deprivation must truly have been unpredictable or unforeseeable;

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[1] The opinion in Caine did address, indirectly, the issue of whether the state's decision not to provide pre-deprivation process to the plaintiff doctor complied with the Fourteenth Amendment. There is no need for this Court to concern itself with that issue; however, because plaintiff Faulk clearly was entitled to and did receive pre-deprivation process and, as noted above, plaintiffs have no raised any issue as to the sufficiency of the state-defined procedures for disciplining employees.

2. The pre-deprivation procedures must have been impotent to counter the state actors' particular conduct; and

3. The conduct must have been "unauthorized" in the sense that it was not within the official's expressed or implied authority.

Caine, supra at 1413.

Plaintiff states that his problems with the Vermilion Parish School Board began when the "Vermilion Parish School Board and several of its individual members -- were 'out to get' plaintiff, Jeffrey J. Faulk, Sr., because of Mr. Faulk's vocalized intent to expose the illegal practices of the Board with regard to 'substitute' bus drivers." Plaintiff's Memorandum in Opposition, at 1. The analysis pursuant to Zinermon will address plaintiff's claims with regard to Incidents 1 and 3.

First, while suspension of Mr. Faulk for the May 1, 1991 accident might have

been foreseeable, defendants' decision to suspend him in violation of the tenure laws, as in Caine, a willful violation of procedure by an entire School Board, was certainly not foreseeable. Therefore, the first prong of the pre-conditions of Zinermon is similarly met herein.

Second, plaintiff claims that the pre-deprivation hearing was "impotent to counter the state actors' particular conduct," i.e., that the School Board members, including its' counsel, Calvin Woodruff, were conspiring to "get" plaintiff because of his statements. Again, the facts are similar to the situation in Caine, if, as plaintiff alleges, the School Board would have violated any procedures set out by the State if, as plaintiff alleges, to "get him" was their aim. Therefore, the second prong of the Zinermon condition applies.

Third, based on Mr. Faulk's claims, the Vermilion Parish School Board's actions could certainly not be characterized as "authorized", if in fact the regulations were used to discipline Mr. Faulk for inappropriate reasons. Once more, these allegations are similar to those in Caine v. Hardy; as in that case, this court finds that the board could not have been authorized to misuse the procedures in such a fashion. Therefore, the third precondition to applying Parratt/Hudson is also met herein.

Therefore, the application of the Parratt/Hudson doctrine, as defined by Zinermon, is appropriate in this matter. Based on plaintiff's conclusionary allegations, any deprivation of Due Process suffered by plaintiff was "random and unauthorized." Moreover, there was in place a statutorily granted post-

deprivation remedy providing for judicial review of the Vermilion Parish School Board's actions, with language specifically providing review and a remedy. Accordingly, pursuant to Parratt/Hudson, with the Zinermon "wrinkle", Mr. Faulk does not have a claim for a violation of the Fourteenth Amendment guarantee of procedural Due Process as there was in place a statutorily defined post-deprivation remedy.

Plaintiff further claims he has a substantive Due Process claim arising from his interest in continued employment. The fifth Circuit has held that a "public employee has a 'substantive' Due Process right by virtue of his state property interest in continued employment." Russell v. Harrison, 736 F.2d 283, 288 (5th Cir. 1984); Schaper, 813 F.2d at 717.

As the Fifth Circuit has granted Mr. Faulk a substantive Due Process right, this Court will now determine if plaintiff can claim a violation of that right at the pre-termination state, as it is clear that plaintiff is still presently employed by the Vermilion Parish School Board.

As previously discussed, the Parratt/Hudson doctrine is defined as a "deprivation resulting from a 'random and unauthorized act' of a state official which does not violate Due Process when the state provides an adequate post-deprivation remedy." Schaper at 717. "When a deprivation results from random and unauthorized conduct that is not amenable to any pre-deprivation check, what process is due cannot be assessed until available post-deprivation remedies have been exhausted." Schaper at 717.

Parratt/Hudson doctrine does not necessarily apply to all substantive Due Process claims, for example, in the instance where a "plaintiff alleges that the state action also violated an independent substantive right, and further asserts that the action itself was unconstitutional, his rights will be violated no matter what process precedes, accompanies, or follows the unconstitutional action." Augustine v. Doe, 740 F.2d 322 (5th Cir. 1984), Schaper, supra at 717.

Mr. Faulk also alleges that he threatened to speak about the Vermilion Parish School Board's alleged practice of keeping certain drivers in the position of "substitute" and asserted that practice was against the law. In order to retaliate and silence Mr. Faulk, he claims the School Board imposed various

disciplinary actions, which were previously detailed in Incidents 2, 4 and 7, in violation of his First Amendment right to free speech.

Mr. Faulk claims the "message was given to the Board members by Mr. Faulk as a part of his representation of the members of the Bus Drivers' Association, in an attempt to receive fair treatment for all bus drivers and in an attempt to have the school board comply with the law."

Caine, supra states the standard for a determination of a violation of plaintiff's right to freedom of speech, as follows:

> Public employees do not, by virtue of their positions, shed the First Amendment rights to speak out on matters of public concern. Pickering v. Board of Education, 391 U.S. 563, 88 S.Ct. 1731, 1734, 20 L.Ed.2d 811 (1968).

> The Threshold legal question in such cases is whether the employee's speech dealt with matters of truly public concern opposed to matters of purely personal interests of inter-office disputes. Connick v. Myers, 461 U.S. 138, 146, 103 S.Ct. 1684, 1690, 75 L.Ed.2d 708 (1983).
>
> It cannot be denied that the context in which public employees expresses himself may be relevant to determining whether the speech expressed a matter of "public concern." Noyola v. Texas Dept. of Human Resources, 846 F.2d 1021, 1023 (5th Cir. 1988).

However, as stated in Caine, supra, "but context alone cannot transform an inherently self-interested opinion into one that implicates public issues." Caine at 1416.

Plaintiff, Mr. Faulk, claims that the public at large would have had an interest in knowing that the Vermilion Parish School Board was allegedly keeping certain bus drivers in the position of

"substitutes" in contravention of the law. In Connick, supra, the Supreme Court rejected this argument and the Fifth Circuit as well has stated:

> Because almost anything that occurs within a public agency could be of concern to the public, we do not focus on the inherent interest or importance of the matters discussed by the employee. Rather, our task is to decide whether the speech at issue in a particular case was made primarily in the plaintiff's role as a citizen or primarily in the role as an employee.

Caine, supra at 1416, citing Terrell v. Univ. of Tex. System Police, 792 F.2d 1360, (5th Cir. 1986), cert. denied, 479 U.S. 1064, 107 S.Ct. 948 (1987).

Plaintiff clearly states that his remarks were made in the context of an employee of the Vermilion Parish School Board and as a representative of the Vermilion Parish Bus Drivers Association. As previously stated, the "substitute"

drivers are not members of the Association.

A determination of "public concern" is a question of law to be resolved by the court. Connick 461 U.S. at 148, n.7, 103 S.Ct. at 1690 n.7; Click v. Copeland, 970 F.2d 106 (5th Cir. 1992). This Court finds that Mr. Faulk's statements concerning the "substitute" drivers do not rise to the level of "public concern," as the speech in question was primarily concerned with Mr. Faulk's representation of the Vermilion Parish Bus Drivers' Association. Although, it may be inferred that the alleged retaliation by the School Board was directed at Mr. Faulk, as the Association's president, the statement about the "substitutes" was not sufficient to be deemed a matter of public concern.

The Fifth Circuit stated in Caine: "Such a constitutionalization of primarily intra-office disputes would invite undesirable judicial interference into mundane government operations, however, with hardly even a marginal effect on the vigorous debate of public issues secured by the First Amendment." Caine, supra, at 1416.

Therefore, this Court finds that plaintiff's First Amendment freedom of speech rights were not violated by Dartez, the School Board Members, or Calvin Woodruff, as his statements were not of sufficient public concern to warrant constitutional protection.

Plaintiff's substantive right to continued employment comes from state law, i.e., La. Rev. Stat. 17:493. As stated, this Court found plaintiff has no independent claim for a violation of his

First Amendment freedom of speech. Furthermore, plaintiff's substantive Due Process claim as made merely restates plaintiff's procedural Due Process claim of a right to continued employment with the School Board. Therefore, it would serve no purpose to allow Mr. Faulk to circumvent the bar to a procedural Due Process claim, as stated by the Parratt/ Hudson doctrine, and allow him to maintain a substantive Due Process claim, based on the same actions by state officials and his claim to the right to continued employment. Underlying this Court's finding is the language of Schaper, supra at 718, which provides that in light of Parratt/Hudson this Court cannot "allow plaintiff to challenge the deprivation of a property interest on the ground that it resulted from arbitrary and capricious state

action, while under Parratt/Hudson he would not be able to state a claim for a deprivation of the same right on the ground that it resulted from a random and unauthorized act of a state official.

Therefore, plaintiff has not presented evidence to meet defendants' evidence that plaintiff has no substantive Due Process for an alleged violation of the School Board, Dartez or Calvin Woodruff and as a result plaintiff's claim for a substantive Due Process violation is hereby DISMISSED.

Considering the foregoing, this Court will GRANT the motion for summary judgment filed on behalf of defendants, Vermilion Parish School Board, its superintendent, Daniel Dartez and its individual members, (Anthony J. Fontana, Jr., Kibbie P. Pillette, Hampton J. Primeaux, Cecil J. Hebert, Carroll E.

LeBlanc, Herman J. Suire, Duffy G. Marceaux, Jr.) ("School Board Members") and Vermilion Parish Assistant District Attorney and General Counsel for the School Board, Calvin Woodruff.

THUS DONE AND SIGNED in chambers this 30 day of September, 1993 at Lafayette, Louisiana.

/s/ Rebecca F. Doherty
REBECCA F. DOHERTY
UNITED STATES DISTRICT JUDGE

FILED ON: SEPTEMBER 30, 1993